

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MICKEY SALINAS, §
§
Plaintiff, §
§
v. § CAUSE NO. 1:18-CV-00147
§
LIBERTY MUTUAL GROUP, INC., §
§
Defendant. §

DEFENDANT'S TEXAS INSURANCE CODE ARTICLE 542.007A MOTION TO CAP
ATTORNEY FEES

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Liberty Mutual Group, Inc. ("Liberty") files this Motion to Cap Attorney Fees and, in support of same, would respectfully show the Court as follows:

I.

Plaintiff filed this suit on August 18, 2018 in state court for damage sustained to Plaintiff's property caused by "hail, wind and water associated with a weather event on or about May 12, 2017." See Plaintiff's Original Petition, page 1, attached hereto as Exhibit "A." Liberty removed the case to this Court on September 20, 2018. Therefore, since this case involves a claim for damages caused by a wind/hail claim under a homeowners insurance policy filed after September 1, 2017, Texas Insurance Code Chapter 542A applies to this suit. See *id*; Texas Insurance Code Chapter 542A.001-.007, attached hereto as Exhibit "B." Under 542A.033, the new law requires a Plaintiff to send a pre-suit notice to Defendant stating the nature and amount of their claim and attorney fees at least sixty days before filing suit. See Exhibit "B,"

542A.003. If the required statutory notice is not presented to Defendant before filing of suit, 542A.007 allows the Court to cap and limit Plaintiff's attorney fees to the reasonable and necessary amounts incurred by the attorney up to the date this Motion is filed and does not allow any attorney fee recovery after the filing of this Motion. See Exhibit "B," at 542A.007(d).

Defendant attests and confirms that Defendant has never received the required Article 542A.003 pre-suit notice from Plaintiffs. *See* Defendant's verification attached to this Motion. Thus, as authorized by Article 542A.007(d), Defendant requests this Court cap and limit Plaintiff's attorney fee recovery to the amount of fees reasonably incurred up to the filing of this Motion and preclude any fee recovery thereafter.

WHEREFORE, PREMISES CONSIDERED, Defendant Liberty Mutual Group, Inc. requests that this Court grant this Motion to Cap Attorney Fees and for all other relief to which Defendant is justly entitled.

Respectfully Submitted

HANNA & PLAUT, L.L.P.
211 East Seventh Street, Suite 600
Austin, Texas 78701
Telephone: (512) 472-7700
Facsimile: (512) 472-0205

By: Tara D. Mireur
Catherine L. Hanna
State Bar No. 08918280
Email: channa@hannaplaut.com
Tara D. Mireur
State Bar No. 24001959
Email: tmireur@hannaplaut.com

**ATTORNEYS FOR DEFENDANT
LIBERTY MUTUAL GROUP, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Bob Hanna
301 Chestnut Street
Abilene, Texas 79602
Attorneys for Plaintiff

By: Tara D. Mireur
Tara D. Mireur

VERIFICATION

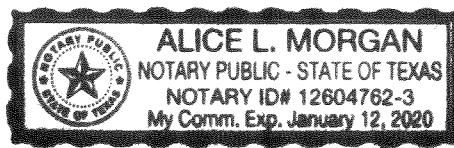
STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared Tara D. Mireur, attorney for Defendant, who attests and affirms that the matter set forth in the Motion to Cap Attorney Fees are true and correct.

Tara Mireur
Tara D. Mireur

SUBSCRIBED AND SWORN TO BEFORE ME this the 12th day of October, 2018.



Notary Public
Notary Public

Alice Morgan
Printed Name of Notary